



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on November 13, 2012 for:

1. A Monetary Order for cost of emergency repairs - Section 67;
2. An Order for the return of double the security deposit – Section 38;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 4, 2012 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Parties entitled to the respective amounts claimed?

Are the Parties entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2010 and ended on September 30, 2012. Rent of \$1,580.00 was payable monthly and at the outset of the tenancy the Landlord collected \$790.00 as a security deposit. No move-in or move-out inspection was conducted. The Landlord states that the move-out inspection was not conducted because the Tenants failed to remain and complete one. The Tenants state that no move-out inspection was offered by the Landlord.

The Tenant states that the forwarding address was provided by email to the Landlord and the Landlord's agent on October 13, 2012 and claim \$1,580.00. The Landlord states that no email was received by him and that the Tenant's forwarding address was only discovered when the Tenant's application for dispute resolution was received. The Landlord does not recall the date of receipt of the application and the Tenant states that the application was sent to the Landlord by registered mail on November 26, 2012.

The Tenant states that on March 1, 2012, the dishwasher started to leak and that although the problem was reported to the Landlord's agent immediately the Agent did not respond until four days later. The Tenant states that by this time the leak had caused the carpet to become wet. The Tenant states that it was not until they contacted the Landlord directly that the Agent finally responded by sending a repair person. The Tenant states that this person did not make sufficient repairs and the leak occurred two more times. The Tenant states that the problem was still not fixed by the repair person sent by the Landlord who could not speak or understand English and the Tenants could not communicate about the problem. The Tenant states that the leaks continued until the Tenant finally called a repair person who repaired the problem which was apparently caused by a garbuerator switch. The Tenant states that they did not have any more leak problems from the kitchen after that. The Tenant states that as a result of the lack of response by the Landlord the leaks created large stains in the carpet and that the Tenants then had the carpets cleaned. The Tenant states that the cleaners were unable to remove all the stains from the leaks. The Tenant claims \$219.00 for the cost of cleaning the carpet and \$80.00 for the cost of repairs in relation to the leak.

The Landlord states that the garbuerator was initially thought to be the problem and had it replaced. The Landlord states that when the Tenants called again on April 11, 2013 the repair person told the Landlord that the drain was the problem and that it was clogged by some clay type material. The Landlord states further that due to grease backup in the kitchen a valve in the dishwasher was broken. The Landlord states that he believes that the one Tenant, a dentist, was making some dental materials in the kitchen and that this material is what caused the problem by clogging the sink and garbuerator. The Landlord states that the stains on the carpet were not solely caused by the leak as there were stains in the living room and dining room as well as stains near the leak area. The Landlord states that the person they hired fixed the problem. The Landlord states that the Tenant caused the garbuerator to fail due to misuse. The Landlord claims \$320.37. The Tenant states that it is against her professional ethics and mandatory sterilization requirements to prepare dental materials anywhere but at the dental office or the dental lab. The Tenant denies that anything was done by the Tenants to cause the garbuerator to be replaced or the sink to be clogged.

The Landlord states that the carpets were so dirty and stained that the carpet required replacement. The Landlord states that the carpet had also been pulled out of shape likely from the carpet cleaning done by the Tenants. The Landlord states that instead of carpet they chose laminate flooring as it was more economical. The Landlord claims \$1,037.59 for the cost of the laminate and baseboards and \$426.69 for the cost of the underlay. The Landlord claims the costs of removing the carpet (\$250.00) and old baseboards (\$150.00), installing the laminate (\$912.00), new baseboards (\$100.00) and disposal and clean up costs (\$250.00).

The Landlord states that they washroom shower door required replacing as the Tenants left the shower door with a damaged hinge. The Landlord claims \$150.00. The Tenants state that the shower door was damaged at move-in.

The Landlord states that the bathroom wall and ceiling and other walls in the unit were damaged and marked by fingerprints requiring the unit to be painted. The Landlord stated that the baseboards also required painting. The Landlord states that the Tenants also left the unit unclean. The Landlord claims a global amount of \$1,350.00 for these repairs that included labour and materials. The Tenants state that the bathroom was damaged due to a leak from a unit above the Tenants' unit and that the Landlord knew about this leak and had been hoping to make an insurance claim to cover the cost of repairs to the damages caused by the upper floor leak. The Tenant states that the unit was all cleaned before move-out by themselves and that the only items left were new plastic garbage bags, some tissue paper and hangers. The Tenant states that as they did not want to throw away these useful items the Landlord agreed that they could leave them in the unit.

The Landlord provided photos of the unit. The Tenant states that it is unknown when these photos were taken and are not proof of the state of the unit at their move-out.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Landlord's denial of receiving the forwarding address until receipt of the application for dispute resolution and considering that an email does not give effect to the requirement that the address be provided in writing, I find that the Landlord received the forwarding address when the application was received. Based on the Tenants evidence that the application was sent by registered mail on November 26, 2012 and noting the Landlord's application made December 4, 2012, I find that the Landlord filed to claim against the security deposit within 15 days receipt of the Tenant's forwarding address. As a result, I find that the Landlord is not required to repay double the security deposit.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished.

As the Landlord did not conduct a move-in inspection, I find that the Landlord's right to claim against the security deposit is extinguished and that the Tenants are entitled to the return of the **\$790.00** security deposit plus zero interest.

Section 7 of the Act provides that where a party does not comply with the Act, regulation or tenancy agreement, such as the landlord making timely repairs, landlord providing compensation for the cost of approved emergency repairs by the tenant and the tenant leaving a unit reasonably clean and undamaged, that party must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Section 21 of the Residential Tenancy Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Although the Landlord argues that the Tenant caused the problems resulting in the leak in the kitchen, I find this argument to be weak and based more on suppositions than fact. I find that the Landlord has therefore not substantiated that the Tenants caused the leak. As the Tenants did not cause the leak, I find that the Tenants are also not responsible for the replacement of the carpet due to stains caused by the leak. Given

the lack of a move-out condition report and considering the photos do not show the extent of the stain from the leak, I find that I cannot determine whether the remaining stain on the carpet would have required its replacement of the carpet regardless of the stains from the leak. As a result, I find that the Landlord has not substantiated that the Tenant is responsible for any cost incurred in replacing the carpet.

Accepting the undisputed evidence that the leak caused water to soak the carpet, that the Landlord did not respond to the report of the leak for four days, and that the Tenants ultimately repaired the leak problem at their expense, I find that the Landlord failed to act reasonably to repair the leak causing the carpet to be stained and require cleaning. Given the Tenant's invoice for the cost of cleaning the carpet, I find that the Tenants are entitled to **\$219.00** for the cost of cleaning the carpet. As the Landlord did not provide permission to the Tenants for making the final repairs to the leak, I find that the Tenants are not entitled to compensation for this repair and I dismiss this claim of the Tenants.

Based on the undisputed evidence that an upper unit leaked into this unit, I find that the Landlord has not substantiated on a balance of probabilities that the Tenants caused damage to the bathroom walls and ceilings. As there is neither a move-in or move-out condition inspection report, given that the photos do not indicate details of an unclean unit or other wall damage and noting that fingerprints would not reasonably cause a wall to require painting, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant left the unit unclean or damaged and I dismiss the remaining claims for damages, including the claim in relation to the shower door.

The Tenants are entitled to a total monetary amount of **\$1,009.00** (\$790.00 and \$219.00). As neither Party has been substantially successful with their applications, I decline to award either Party recovery of their filing fee.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$1,009.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 5, 2013

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Residential Tenancy Branch

